

G-011/S-94-907 ORDER GRANTING CERTIFICATION SUBJECT TO LIMITATIONS AND
CONDITIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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Cynthia A. Kitlinski
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by UtiliCorp United
Inc. for Minnesota Public Utilities Commission
Certification to Invest in a Foreign Utility
under 15 U.S.C. § 79z-5b

ISSUE DATE: November 30, 1994

DOCKET NO. G-011/S-94-907

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PROCEDURAL HISTORY

On September 30, 1994, UtiliCorp United, Inc. (UtiliCorp) filed a request for Commission certification to the Securities Exchange Commission (SEC) regarding UtiliCorp's proposed acquisition of interests in two New Zealand electric utilities.

On October 26, 1994, the Department of Public Service (the Department) filed comments recommending that the Commission grant the certification request with limitations.

No other party filed comments.

On November 23, 1994, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE FEDERAL ENERGY POLICY ACT OF 1992

The federal Energy Policy Act of 1992 was signed into law on October 24, 1992. Among other things, the Act exempts from the provisions of the Public Utilities Holding Company Act (PUHCA) a new class of utility, the foreign utility company. Foreign utility companies may be exempt from PUHCA requirements even if they are subsidiaries or affiliates of a state-regulated holding company or public utility. This exemption from state regulation applies only if every state commission with jurisdiction over the public utility certifies to the SEC that the commission:

1. has the authority and the resources to protect ratepayers subject to its jurisdiction;
and
2. intends to exercise its authority.

State-regulated utilities must report to their state commissions the acquisition of an interest in a foreign utility within 30 days of the acquisition.

II. THE UTILICORP PETITION

UtiliCorp, a Delaware corporation, has two divisions that provide natural gas service to customers in Minnesota: Peoples Natural Gas Division (Peoples) and Northern Minnesota Utilities Division (NMU). Peoples and NMU are public utilities regulated by the Minnesota Public Utilities Commission.

In its petition, UtiliCorp stated that it would purchase an interest in two New Zealand electric utilities, Power New Zealand Limited (PNZ) and Energy Direct Corporation Limited (EDL). The interests would actually be purchased by UtiliCorp N.Z., a subsidiary of UtiliCorp.

UtiliCorp estimated that its total investment for the New Zealand utilities will be approximately \$64.46 million.

UtiliCorp stated in its petition that no Minnesota property would be encumbered as a result of the acquisitions. UtiliCorp claimed that the transaction would have a very minor effect on its capital structure and would not result in financial detriment. According to UtiliCorp, Peoples and NMU would be insulated from any liability arising from the transaction because the foreign stock would be acquired by a separate corporate entity.

III. COMMENTS OF THE DEPARTMENT

The Department recommended that the Commission certify that it has the authority and resources to protect Minnesota ratepayers and that it intends to exercise its authority with respect to UtiliCorp's proposed investment.

The Department recommended that the certification be limited to this particular proposed acquisition, and that UtiliCorp be required to notify the Commission in advance of any further proposed foreign investments. The Department also recommended that UtiliCorp be subject to certain filing requirements relating to foreign investments.

The Department agreed with UtiliCorp that no Minnesota property would be encumbered as part of the proposed acquisition. The Department also agreed that the structure of the transaction would effectively insulate Peoples and NMU from potential liability.

IV. COMMISSION ACTION

The Energy Policy Act of 1992 requires that UtiliCorp receive Commission certification that the Commission has the authority and resources to protect ratepayers, and that it intends to exercise its authority for ratepayer protection.

The Commission answered a similar request for certification from UtiliCorp in its June 15, 1993, ORDER GRANTING LIMITED AND CONDITIONED CERTIFICATION. In that Order the Commission found that it had sufficient authority, resources, and intent to protect ratepayers from any harm arising from UtiliCorp's acquisition of a foreign electric distribution company.

The Commission has examined the facts presented in the Company's current petition and makes a similar finding in this Order.

A. Authority to Protect Ratepayers

The Commission has the authority under Minn. Stat. §§ 216B.03, 216B.08, and 216B.16 to set just and reasonable rates for Peoples and NMU ratepayers. The Commission will review expenses submitted in Peoples' and NMU's next general rate cases to determine their prudence and reasonableness. The Commission has the statutory authority to disallow any costs allocated by UtiliCorp to Peoples or NMU if disallowance were necessary to insulate ratepayers from the effects of UtiliCorp's foreign investment.¹

The Commission agrees with the Department that the Commission can best protect ratepayers through case-by-case, prospective review of proposed foreign investments. The Energy Policy Act, however, can be read to allow a utility to invest in a foreign utility with only after-the-fact notification to the state regulator, once initial state certification is obtained.

The Commission will therefore limit its certification to the single transaction contemplated in UtiliCorp's September 30, 1994, petition. The Commission will require UtiliCorp to provide advance notification of any future proposed foreign investment. Finally, the Commission will require UtiliCorp to submit the filings recommended by the Department.

¹ The Commission disagrees with UtiliCorp's assertion that Peoples and NMU's separate capital structures would be unaffected by any changes in UtiliCorp's capital structure. While UtiliCorp does allocate financial resources to Peoples and NMU to create independent capital structures, the Minnesota utilities are still operating divisions of, and receive all their financing from, UtiliCorp. Any effects from the proposed foreign investment upon UtiliCorp's capital structure could therefore affect Peoples' and NMU's capital structures and resulting rates.

B. Resources to Protect Ratepayers

The Commission finds that it has adequate staff and financial resources to protect Minnesota jurisdictional ratepayers from possible harm or liability arising from UtiliCorp's proposed foreign acquisition. The Commission's limited, case-by-case certification will help ensure that future foreign investments do not take place without adequate Commission analysis if in the future the Commission should lack the necessary staff or financial resources.

C. Commission Intent to Exercise Authority

The Commission intends to exercise its authority, pursuant to Minn. Stat. §§ 216B.03, 216B.08, and 216B.16, to protect the interests of Peoples and NMU ratepayers.

ORDER

1. The Commission certifies that it has the authority and resources to protect the ratepayers subject to its jurisdiction and that it intends to exercise that authority with respect to UtiliCorp's proposed investment in Power New Zealand Limited and Energy Direct Corporation Limited.

The Commission's certification is subject to the following conditions and limitations:

- a. The certification is limited to UtiliCorp investments in PNZ and EDL proposed in this docket;
 - b. UtiliCorp shall provide advance notification of any intent to acquire an interest in foreign utility companies and shall obtain separate certification for any such additional investments;
 - c. UtiliCorp shall file with the Commission:
 - i. copies of the 30-day reports filed with the SEC pursuant to Section 715 of the Energy Policy Act at the time it files these reports with the SEC; and
 - ii. an annual report on the PNZ and EDL investments and any other foreign utility investments that may occur in the future.
 - d. The annual and 30-day reports filed pursuant to the preceding subsection shall contain the following information:
 - i. the total investment in PNZ and EDL to date;
 - ii. a list of all outstanding bonds issued since UtiliCorp agreed to acquire interests in PNZ and EDL; and
 - iii. UtiliCorp's capital structure, including short term debt.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)